



April 6, 2004

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Mr. Horst Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality
722 Jackson Place, NW
Washington, D.C. 20503

National Environmental Policy Act (NEPA) Modernization Review—Proposed Model
Memorandum of Understanding

Dear Mr. Greczmiel:

BP Exploration (Alaska) Inc. (BPXA) appreciated the opportunity to participate in the "roundtable" meetings sponsored by the Council on Environmental Quality (CEQ) on January 8 and 9, 2004 regarding the task force report on "Modernizing NEPA Implementation."

At that meeting BPXA representatives Dr. Ray Jakubczak and Mr. Jeff Conrad mentioned that one of the principal mechanisms to improve the implementation of the National Environmental Policy Act (NEPA) was adoption of a model Memorandum of Understanding (MOU). This MOU would be used by lead and cooperating agencies and a permit applicant as a management mechanism to guide the environmental review process under NEPA with provisions for mutual commitments and actions to ensure an efficient, objective and quality process. You indicated that a draft of such a model MOU would be valuable for CEQ consideration in its NEPA modernization review. We have enclosed a draft MOU for your consideration.

As operator of major North Slope oil fields and an interest owner in others, BPXA is very familiar with environmental reviews conducted under NEPA. Permitting of BPXA's Northstar oil field in the late 1990's, and, more recently, the Liberty Project in the Beaufort Sea involved an Environmental Impact Statement (EIS). In addition, BPXA personnel assisted other companies in permitting and EIS participation relating to the renewal of the Trans-Alaska Pipeline Right-of-Way and the Point Thomson Project on the eastern North Slope. Each of these projects utilized a MOU to varying degrees of success to guide the EIS development. The enclosed model MOU draws upon these and other experiences with respect to NEPA implementation.

The enclosed model MOU includes management mechanisms and agency-applicant agreed actions to efficiently implement the EIS process in the following topical areas:

1. Applicant Participation in the EIS Process

CEQ regulations and federal agency NEPA implementation regulations relating to environmental reviews involving EIS's are either silent or vague with respect to the applicant's role in the process. It is possible that some of the inefficiencies and delays in the

EIS process can be attributed to this lack of clarity and/or lack of appropriate applicant participation. Providing for an applicant to have a seat at the table and a clearly defined active role in the EIS process (with participation structured to ensure agency objectivity in decision-making) is critical to the success of an EIS. Such participation can be defined in a MOU. The applicant is the most knowledgeable participant with respect to the project proposal, the environmental performance and mitigation measures incorporated into the project, and the feasibility of alternatives to be considered in the EIS analysis. The applicant generally has significant technical expertise to assist the agencies in requests for information. Finally, the applicant typically has expertise in a broad suite of regulatory programs having to deal with state and local approvals (required in addition to federal approvals) which may or may not be coordinated with the EIS process. With an active seat at the table, the applicant can work with the federal agencies to ensure coordination with other permits and approvals the applicant has to obtain for its project. This is important because the applicant has a role in the scheduling of its permit applications and related project information generation to satisfy diverse regulatory requirements.

2. Project Management

Bringing project management to an EIS is also critical to the success of the process. This means establishing an agreed set of goals, objectives and schedule and managing to those goals by an EIS team comprising the lead and cooperating agencies, a third party EIS contractor (if applicable) and the applicant. A model MOU should, therefore, address project management in defining the roles and responsibilities of the lead and cooperation agencies and the applicant. It should also require the lead agency to identify a project manager. Joint commitments relating to an agreed schedule and necessary actions (e.g. applicant to provide timely information) to meet that schedule should be incorporated into the MOU. The MOU should also specify that the applicant identify a single point of contact in a project coordinator position, and should provide the necessary funding to support the process.

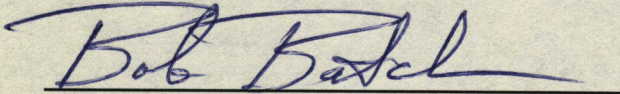
For large projects, the model MOU should include provisions for establishing a "Coordinating Committee." This committee should include the lead agency, cooperating agency and applicant (to the extent appropriate) to facilitate various EIS needs including selection and contracting of a third party EIS contractor, establish and manage communications among the EIS participants as well as other tasks. Such a committee provides a forum to address issues and concerns with respect to meeting the established schedule, public participation and quality goals of the EIS.

3. Coordination and Consultation with Other Applicable Laws and Regulations

As you know, a number of environmental laws and Executive Orders require various consultations or coordination during the EIS process among the federal agencies, with third parties or between the agencies and the applicant (e.g. Endangered Species Act). As such, it is important that the MOU include provisions on how these coordination mechanisms will work and mesh with the EIS schedule and how the applicant will be involved (e.g. designation of the applicant as nonfederal representative with respect to ESA).

In summary, BPXA believes that adoption and use of a model MOU to guide the EIS process and permitting of a project is a major component to assure an efficient, timely and transparent process. As such, a model MOU will contribute to CEQ's goal to "modernize" implementation of NEPA. Additional modernization ideas identified in this CEQ initiative may also fit into the model MOU which could be revised accordingly.

BPXA appreciates this opportunity to participate in this CEQ NEPA initiative and welcomes the opportunity to continue participation as appropriate. If you have any questions concerning the enclosed draft model MOU or wish to discuss further participation opportunities for BPXA, please contact me at (907) 564-5580 or Dr. Ray Jakubczak at (907) 564-4664.

A handwritten signature in blue ink, reading "Bob Batch", written over a horizontal line.

Bob Batch
Vice President, Alaska
Health, Safety and Environment

Enclosure

**Model Document for Adoption by CEQ
As Part of National Environmental Policy Act (NEPA)
Modernization Review**

**Memorandum of Understanding
NEPA Environmental Impact Statement
Reviews and
Permitting for the
Project**

Between

(Lead Agencies)

And

(Cooperating Agencies)

And

(Applicant)

I. Statement of Intent

State that the Memorandum of Understanding (MOU) sets forth responsibilities and schedules that will lead to effective and timely National Environmental Policy Act (NEPA) review involving an environmental impact statement (EIS) or supplemental environmental impact statement (SEIS) and agency permitting decisions for *Applicant's* _____ *Project* (____ Project).

II. Background and Purpose

Describe the background and purpose of the project. Provide language for the draft Purpose and Need section of the EIS or SEIS .

III. Scope

State that the MOU covers the analysis of the environmental impacts of the project under the NEPA process, sets forth the processes and procedures that will be followed for related permits and consultations, and establishes how permitting actions and schedules will be coordinated.

IV. Authorities

List all legal authorities that will be covered by the MOU, including NEPA.

V. Lead, Cooperating, and Participating Agencies

Identify the lead, cooperating and participating agencies and set forth the concept of an interagency coordinating committee.

VI. Responsibilities

A. Lead Agency Responsibilities

This section should list the principal responsibilities of the lead agency or agencies. The lead agency or agencies shall:

1. Commit to adhering to a schedule, as set forth in an exhibit to the MOU, unless modified by agreement of cooperating agencies and applicant;
2. Identify project manager;

3. Identify cooperating agencies and establish duty to include all such entities early in the NEPA process to avoid delays;
4. Define role of lead agency or agencies for making final determination on EIS/SEIS content, including data, analyses, and conclusions;
5. Establish good faith effort responsibility of lead agency to identify and achieve timely completion of consultations and coordination under other applicable laws, including preparation of schedules to guide such reviews;¹
6. Specify lead agency or agencies' consultation responsibilities under other laws, including duty to designate applicant as nonfederal representative for appropriate roles (e.g., Endangered Species Act) and to include applicant, as appropriate, in meetings;
7. Confirm responsibility of lead agency to make a good faith effort to achieve full and timely participation of cooperating agencies in accordance with established schedule;
8. Define procedures for ensuring confidentiality of sensitive information submitted by applicant;
9. Develop in consultation with the applicant and third party EIS contractor (if applicable) a request for information (RFI) process specifying the criteria and documentation for obtaining information from the applicant to ensure timely, focused and efficient information gathering;
10. Develop and maintain documentation procedures for the administrative record; and
11. State that nothing in this MOU shall be construed as altering, or in any way limiting, any agency's ability or responsibility to act in accordance with all applicable federal and state laws and regulations.

¹ This should cover all applicable federal, state, local, tribal procedures that apply, including: Endangered Species Act, Fish and Wildlife Coordination Act, Coastal Zone Management Act, National Historic Preservation Act, Marine Mammal Protection Act, Clean Water Act, Clean Air Act, CERCLA, Fishery Conservation and Management Act, Environmental Justice (Executive Order 72898), Tribal Coordination (Executive Order 13175), Marine Protected Areas (Executive Order 13158), Migratory Birds (Executive Order 13186), etc.

B. Cooperating Agency Responsibilities

This section of the MOU should define the responsibilities of cooperating agencies. The cooperating agencies shall:

1. Identify any actions or consultation requirements applicable to the action early in the NEPA process;
2. Designate the lead official responsible for participating in the EIS/SEIS process;
3. Commit to adhere to schedule established in the MOU, subject to change in accordance with defined procedures;
4. Commit to confidentiality requirements;
5. Commit to coordinating public notice requirements with corresponding steps in NEPA process; and
6. Establish good faith effort commitment to raise all issues early in NEPA process to avoid delay and inefficiency.

C. Applicant Responsibilities

This section should define the duties of the applicant to submit all required applications and data, to participate effectively throughout the NEPA review, and to pay all appropriate NEPA costs. The applicant shall:

1. Provide a sufficient application, including any accompanying environmental report;
2. Identify project coordinator for applicant;
3. Serve as designated nonfederal representative under ESA and prepare a biological assessment;
4. Serve in the defined role for other procedures, such as preparation of essential fish habitat assessment, historic preservation review, etc.;
5. Commit to providing all reasonably justifiable, nonprivileged technical or environmental information needed to prepare an EIS/SEIS, as determined by lead agency, in consultation with cooperating agencies;
6. Commit to necessary funding;

7. Commit to provide timely responses to data requests and provide comments on draft documents; and
8. Serve the defined role of applicant in public meeting coordination.

VII. EIS Procedures

This section would establish key steps in the EIS/SEIS preparation process. The objective is to ensure adequate information gathering, full and careful agency and public review, objective EIS/SEIS preparation, adherence to a defined schedule, and an appropriate role for the applicant.

A. Coordinating Committee

A "coordinating committee" will be established to guide EIS/SEIS preparation for large-scale projects. This committee will consist of the lead agency, project coordinators for cooperating agencies, and the applicant (except on issues not appropriate for applicant involvement). The coordinating committee shall:

1. Establish a regular schedule for coordinating committee meetings;
2. Define duties of coordinating committee to include: tracking EIS/SEIS in relation to established schedule; reviewing draft documents; selecting EIS/SEIS contractor; and coordinating public review, etc.; and
3. Identify issues not appropriate for applicant involvement, and relevant authority for this conclusion.

B. EIS Contractor

1. Require applicant to prepare a list of qualified contractors and submit to lead agency;
2. Require lead agency to forward list to coordinating committee for review, bidding process, and ranking;
3. Require coordinating committee to recommend a preferred EIS/SEIS contractor or to reject all contractors on the list to applicant through lead agency;
4. Provide that applicant will decide whether to accept recommendation or seek further review of additional contractors by coordinating committee;

5. Require that, once the EIS/SEIS contractor has been selected, the lead agency will secure conflict of interest statements from the contractor;
6. Define procedures to ensure proper communication between applicant and EIS/SEIS contractor; and
7. Provide that the contract between the Applicant and the contractor, and any subcontracts thereunder, shall be consistent with the provisions of the MOU and shall specifically incorporate the provisions herein which address the conduct of the contractor.

C. Scoping Process

After the contractor is selected, the lead agency, in consultation with cooperating agencies, the contractor, and the applicant, will conduct and finalize scoping, if required, for the EIS/SEIS. The lead agency shall:

1. Publish a Notice of Intent to prepare an EIS/SEIS in the Federal Register and local publications;
2. Establish a reasonable schedule for meetings among cooperating agencies;
3. Establish a reasonable schedule for public hearings to obtain public input on the appropriate scope of the EIS/SEIS early in the NEPA process;
4. Define the necessary baseline studies; and
5. Publish a scope of work that includes a detailed description of all work to be performed, the persons responsible for performing the work, the estimated work hours required for each task, and the schedule for performing each task.

D. EIS/SEIS Availability

1. Define procedures to be followed for draft and final EIS/SEIS availability and distribution including public meetings;.
2. Establish website arrangements;
3. Define procedures to be used for assembling and reviewing all public comments on scoping and the draft EIS/SEIS;
4. Provide for applicant to have an appropriate role in responding to comments on draft EIS/SEIS;